

**REMARKS**

In response to the non-final Official Action of March 18, 2009, appropriate amendment has been made to the specification in response to the observations made by the Office and minor amendment regarding informalities has been made to the claims. No new matter is added.

**Specification**

At section 1, the disclosure is objected to regarding informalities in the specification, specifically with respect to the description for label 101. Appropriate correction has been made at paragraphs [0030] and [0031].

**Claim Objections**

The Office objects to claim 3 at line 5 of the last paragraph. Appropriate correction has been made as suggested by the Office.

**Claim Rejections - 35 USC §112**

At section 3, claims 1, 2, 6, and 9 are rejected under 35 USC §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 1, amendment has been made to delete the word "certain" with respect to the phrase "certain layer of a protocol stack". Claim 1 has also been amended to particularly point out and claim that said layer of the protocol stack governing communication over said telecommunication connection is lower in said protocol stack than layers that produce upper-level scheduled silence-breaking transmission. Rather than usage of the phrase "first layer" which might potentially cause confusion since the layers of protocol stacks are generally referred to by numbers, such as "Layer 1", etc., the language presented in amended claim 1 makes clear that the location of the referred to layer is lower in the protocol stack than those layers from which the silence-breaking

transmissions emanate. Support for this amendment is found in the original application as filed, including Figure 3 and its accompanying description in the specification.

Regarding claim 2, amendment has been made to particularly point out and claim that the action of classifying the telecommunication connection according to channel type and interleaving type is “in said communication device”. It is therefore respectfully submitted that the claim is not indeterminate as amended.

Regarding the rejection of claims 6 and 9, the objection to the word “certain” is overcome by deletion thereof.

### **Claim Rejections - 35 USC §101**

At section 4, claims 1-6, 8, 9, and 11 are rejected under 35 USC §101 as directed to non-statutory subject matter; specifically, that the claims disclose a method that is not sufficiently tied to a machine or apparatus in order to be carried out, therefore, is not a patentable process, machine, manufacture, or composition of matter.

Claim 1 has been amended to particularly point out and distinctly claim that the action of determining a maximum length of a silent period that is longer than predetermined regular intervals between upper-level scheduled silence-breaking transmissions and is determined in a communication device and transmitted over a telecommunication connection.

It is therefore respectfully submitted that the claim is statutory under 35 USC §101, including the holding in *In re Bilski*, \_\_ F.3d \_\_ (Fed. Cir. 2008) (*en banc*) in that claim 1 as amended recites a method which is tied to a particular machine or apparatus and further performs specific actions in terms of transmitting information; namely, the transmitting of a dummy block over the telecommunication network when the length of an observed silent period reaches said maximum length without an upper-level scheduled silence-breaking transmission or payload data having been transmitted and further in that the layer in which the observing occurs is lower in said protocol stack than layers that produce said upper-level scheduled silence-breaking transmissions. As such, it is

respectfully submitted that claim 1 and dependent claims 2-5 recite statutory subject matter.

Regarding independent apparatus claim 6, it specifically recites an element; namely, a dummy block functionality as shown in Figure 3, reference numeral 303, and discussed in the specification, including page 3, paragraph [0034]. Clearly, this is an element which is configured to perform recited functions and those functions clearly include a transformation of a transmission from a communication device as set forth in amended claim 6. It is therefore respectfully submitted that claim 6 is statutory.

For similar reasons, claim 9 as amended is also believed to be statutory. Dependent claim 11 which depends from claim 9, is also directed to statutory subject matter due at least to said dependency.

#### **Claim Rejections - 35 USC §102**

At section 5, claims 1, 5, 6, 8, 9, and 11 are rejected under 35 USC §102(a) as anticipated in view of 3GPP TSG RAN Working Group 1 Meeting No. 10 (Tdoc R1-00-0075), as cited in the Information Disclosure Statement (IDS) dated July 28, 2006 (hereinafter WG1#10).

The Office asserts that WG1#10 discloses a method comprising the actions recited in claim 1. At page 5, lines 13-15 of the Action, the Office makes reference to WG1#10<sup>1</sup> and states with reference to WG1#10:

“Because the silence must be broken at these regular intervals if no data transmission is detected, the silence period will never extend beyond the length of the regular interval making the regular interval the maximum length of the silence period.”

---

<sup>1</sup> The Office refers to this document as WG1#10, but it is believed that the Office meant to refer to the other publication in said IDS; namely, Tdoc TSG RAN WG1#11 R1-00-0302 (referred to herein with respect to the Office Action as WG1#11).

Thus, as the Office notes, WG1#11 states that there is exactly one type of allowed time interval, which may be called the regular time interval as the Office does. This means that WG1#11 explicitly fails to disclose the actions in claim 1 of namely:

“determining...a maximum length of a silent period that is longer than predetermined regular intervals between upper-level silence-breaking transmissions...” and

“transmitting a dummy block...when the length of an observed silent period reaches said maximum length...”

It should be noted that these passages of claim 1 explicitly define two time intervals: the “regular interval” and the “maximum length of a silent period”. Additionally these passages of claim 1 explicitly require that the latter is longer than the former. Further, claim 1 defines that a dummy block is only transmitted if the maximum length is reached without any silence-breaking transmission from the upper level.

Since WG1#11 only defines exactly one time interval, there can never occur a situation in WG1#11 where the silent period would be longer than said single defined time interval. It is simply not possible to speak about any second, longer time interval that would be defined in WG1#11. Such a second, longer time interval is an explicitly claimed feature in claim 1, which shows that WG1#11 cannot anticipate claim 1.

Applicant notes that claim 1 has been amended to make clear that the action of transmitting a dummy block over the telecommunication network occurs when the length of an observed silent period reaches said maximum length without an upper-level scheduled silence-breaking transmission or payload data having been transmitted. This makes clear that the action does occur, thereby avoiding any potential reading otherwise and clearly distinguishing the actions recited from those in WG1#11.

For all of the foregoing reasons, it is therefore respectfully submitted that claim 1 is not anticipated or suggested by WG1#11.

Independent claims 6 and 9 have been amended in a manner similar to claim 1 and for similar reasons as those presented above with respect to claim 1, independent

claims 6 and 9 are also respectfully submitted as not anticipated or suggested by WG1#11.

Dependent claims 5, 8, and 11 are also not anticipated by WG1#11 at least in view of their dependency from independent claims which are believed to be allowable.

Furthermore, newly submitted independent computer readable medium claim 12 is also believed to be not anticipated or suggested by WG1#11 since it incorporates features corresponding to those discussed above with respect to claim 1.

### **Claim Rejections - 35 USC §103**

At section 7, claims 7 and 10 are rejected under 35 USC §103(a) as unpatentable over 3GPP TSG RAN Working Group 1 Meeting No. 10 (Tdoc R1-00-0075), submitted as prior art (hereinafter WG1#10)<sup>2</sup> in view of 3GPP TS 26.093 V4.0.0 (2002-12) (hereinafter TS26.093).

Dependent claims 7 and 10 respectively depend from independent claims 6 and 9 and are therefore believed to be allowable at least in view of such dependency.

### **Allowable Subject Matter**

Applicant notes that claims 2 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form, including all of the limitations of the base claim and any intervening claims. Dependent claims 2 and 4 are believed to be allowable in their current form due to the arguments presented above with respect to amended claim 1.

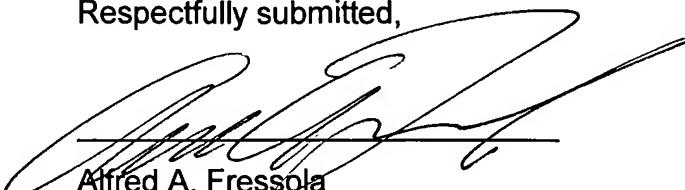
Similarly, claim 3 is believed to be allowable since the rejection under 35 USC §112, second paragraph is believed to be overcome. Its dependency is also believed to be proper for the reasons presented above with regard to claims 2 and 4.

---

<sup>2</sup> See footnote 1 with reference to WG1#11.

In view of the foregoing, it is respectfully submitted that the present application as amended is in condition for allowance and such action is earnestly solicited.

Respectfully submitted,



Alfred A. Fressola  
Attorney for Applicant  
Reg. No. 27,550

WARE, FRESSOLA, VAN DER SLUYS  
& ADOLPHSON LLP  
Bradford Green, Building Five  
755 Main Street, P.O. Box 224  
Monroe, CT 06468  
Telephone: (203) 261-1234  
Facsimile: (203) 261-5676  
USPTO Customer No. 004955